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PUBLIC UTILITIES
COMMISSION

September 21, 2009

Public Utilities Commission
State of Hawai'i
465 S. King St. #103
Honolulu, Hawai'i 96813

Re: Docket No. 2009-0048, Molokai Public Utilities, Inc. ("MPU")
General Rate Case, July 1, 2009 to June 30, 2010 Test Year

Dear Commissioners:

Stand for Water responds as follows to the two questions that the Commission asked in its letter of September 15, 2009:

1. Are members of Stand for Water also members of WMA, and vice versa?

Membership in the West Molokai Association (WMA) is mandatory for all landowners on the West End of Moloka'i. In contrast, Stand for Water is a voluntary organization made up of residents from all of the areas served and/or affected by the utilities owned by Molokai Properties Ltd. All of the West End landowners who belong to Stand for Water are also members of the WMA. Some of the members of WMA are also members of Stand for Water.

Although there is crossover between the memberships of both organizations, a few important facts should be emphasized about the extent to which WMA represents its mandatorily enrolled membership. Specifically:

1) WMA has not held a membership meeting in at least six months. All of WMA's business is conducted by a board of directors that includes the following individuals, according to the WMA's current website:

Lyle Dunham, President (2008-2011)
Jim Wayne, Vice President/Treasurer (2008-2011)
Darryl Canady, Secretary (2007-2010)
Bob Marusich, Director (2009-2012)
Daniel Orodener, Director (2007-2010)
Yolanda Reyes, Director (2008-2011)

To the best of our knowledge, two of these directors (MPL employees Daniel Orodener and Yolanda Reyes) represent landowner Molokai Properties Ltd.'s interests on the board. This may present a conflict of interest for WMA, especially since board members are currently making decisions for the entire organization without consulting the general membership.

2) Although they were aware of Stand for Water's campaign against rate increases, none of the above-listed individual WMA board members has joined Stand for Water.

3) The WMA board decided to hire an attorney and to intervene in this rate case without any notice to its membership or any consultation with the West End community. Most of Stand for Water's WMA members were not aware that Mr. Bill Milks would be representing WMA and testifying on its behalf until he stood up at the PUC's September 3 hearing.

4) In contrast to the majority of Stand for Water's membership, the majority of WMA members do not reside on Moloka'i full-time. The properties that make up the WMA membership are as follows:

Land Parcels – 320 Total
Fairway/Golfview Lots = 16
Moana Makani Lots = 32
Papohaku Ranchlands Lots = 272

Condominiums – 490 Total
Kepuhi Beach Resort = 144
Kaluakoi Villas = 148
Ke Nani Kai = 120
Paniolo Hale = 78

According to the WMA website, there are homes on only 60 of the 320 land parcels. The rest of the parcels are vacant. Most of the 490 condominiums are used as seasonal vacation homes by their owners. Because most WMA members do not live permanently on Moloka'i, the disrepair of MPU's water system has not affected them as much as full-time residents, nor will higher water rates impact them as much as those who live here full-time. Stand for Water also represents part-time residents, but the majority of its membership lives here year round.

2. Are the interests of Stand for Water and WMA overlapping or duplicative?

Both Stand for Water and WMA share an interest in reasonable water rates, and in an efficient, legal transmission system that provides safe drinking water. Because Stand for Water's membership includes individuals with intimate knowledge of the MPU water system and financial practices (see the list of prospective witnesses in Stand for Water's motion to intervene), our group will be able to provide critical and relevant information to the Commission in these proceedings.

Aside from the interests shared with WMA, Stand for Water represents several interests that WMA will not address.

1) Protection of Island Water Resources: Stand for Water includes Moloka'i residents in all of the communities that would be affected by MPL's proposed rate increases. WMA only represents MPL's West End customers. In the rate proceedings initiated last year by the PUC, all of MPL's utilities were joined in one docket. This approach recognized that although MPL owns

separate utilities, in reality they are all part of one parent company which makes decisions for all of its subsidiaries. The “corporate veil” between the parent and its subsidiaries was pierced in a state Department of Health administrative decision that was affirmed on appeal by the First Circuit Court in August 2008. Although MPL has now filed separate rate increase requests for its water utilities, in reality the two systems are both legally and physically inseparable.

Well 17 in central Moloka‘i supplies drinking water to both Wai‘ola O Moloka‘i and MPU customers. This common source of water means that mismanagement of water from Well 17 by either MPL utility will have consequences for the other. And because the entire island relies on a single aquifer for its water, mismanagement will also have consequences for the entire island. Stand for Water will address this issue in these proceedings.

In 1996, the EPA formally designated Moloka‘i’s water resource as a “sole source aquifer” under the Safe Drinking Water Act. According to hydrology reports, salinity (salt) levels in at least three of Moloka‘i’s five drinking water wells are increasing. Under its contract to use the Molokai Irrigation System for water transmission, MPL was supposed to test Well 17 for salinity each year. But no such tests have been conducted since 1984. And experts have expressed concern as to whether pumping in Well 17 (which is currently being done without permits due to a Supreme Court decision) might be causing some of the rise in salinity in other wells.

Stand for Water members testified in the PUC’s September 3 hearing that there are major leaks in the MPU system. These leaks are depleting a water resource that serves not just MPL’s utilities, but the entire island. If Well 17 is being over-pumped to make up deficits caused by poor management of MPU’s system, the aquifer that serves the entire island may be in jeopardy. Stand for Water has a compelling interest in protecting the island’s water supply for its membership. WMA will not address this issue because it only represents landowners on Moloka‘i’s West End.

2) Protection of Agriculture: In addition to its interest in protecting the island’s only aquifer, Stand for Water also has an interest in protecting needs of farmers. MPU customers include agricultural enterprises that depend on affordable water rates to run their businesses. The rate increases approved in 2008 have already resulted in the demise of several orchards, and they are now threatening to shut down the West End’s last remaining cattle ranch.

MPL and its predecessors sold agricultural lots with the promise that an agricultural water system would be developed to support farming on these properties. No such system was ever constructed, and as a result farmers have been forced to rely on potable water for their crops and livestock. HRS §269-26.5 provides that the PUC can establish preferential potable water rates for agricultural activities. This statute says that: “It is the policy of the State to promote the long-term viability of agriculture by establishing mechanisms that provide for preferential rates for potable water for agricultural activities. The public utilities commission shall have the authority to establish preferential rates for potable water used for agricultural activities in a public utility’s service area.” This interest is not listed in WMA’s motion, but Stand for Water will address it in these proceedings because it personally affects members of the organization.

3) Refund of Excessive Rate Payments: In its original August 14, 2008 Order Approving Temporary Rate Relief, and again in its February 24, 2009 Order Approving Extension of Temporary Rate Relief, the PUC warned MPU that if it determined in general rate cases that the temporary rates were in excess of amounts determined to be just and reasonable, MPU and Wai'ola could be ordered to refund the excess to the ratepayers, together with interest, as provided in HRS §269-16(c). Stand for Water has a strong interest in obtaining refunds for excessive rate charges and will address this issue in these proceedings.

4) Focus on Utility Rates and Service: In its motion to intervene, WMA argues at length that the PUC should appoint a receiver to operate MPU. MPL has tried to get government to take over its water systems at least since February of 2008, when it unsuccessfully offered to sell Well 17 to the Department of Hawaiian Home Lands and asked DHHL to partner on a new MIS transmission agreement. DHHL refused the offer, and a month later MPL closed Molokai Ranch. MPL then announced that it was planning to shut down its water utilities, and supported efforts to force Maui County to take them over. Those efforts have failed to date. Now WMA is pushing the PUC to put MPU into the hands of a receiver. Under any of these scenarios, MPL would be relieved of its responsibility to provide water to its West End properties. And since MPL's utilities are currently its only U.S. business activities, MPL would have little incentive to repair or legalize the system in the near future.

In its August 2008 order approving a temporary rate increase for MPU and Wai'ola, the PUC said that it was granting the increase for six months to give MPL time to file a general rate case application or to find a third-party buyer for its utilities. In the September 3 hearing, one of Stand for Water's proposed witnesses testified that he had offered to purchase MPL's utilities, but that his offer had been refused. There is some evidence that other private suitors have also made offers to purchase the utilities, but their offers were also rejected. It now appears that MPL is not interested in selling its utilities to private buyers. Instead, it wants the government to take them over – presumably so that government will carry the responsibility for providing water to future MPL developments, while relieving MPL of its contractual duties to supply water to past developments.

Rather than helping MPL to divest itself of its utilities, Stand for Water's position is that this rate proceeding should be focused on insuring that MPU provides a reliable source of water at reasonable rates to its customers.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy Brunnert', written over a horizontal line.

Timothy Brunnert
President

Public Utilities Commission

Page 5

September 21, 2009

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